

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

HILDA YBARRA
Plaintiff,

v.

**COSTCO WHOLESALE
CORPORATION**
Defendant.

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CIVIL ACTION NO. 7:21-cv-00065

DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL

Defendant, COSTCO WHOLESALE CORPORATION ("Costco"), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.
Introduction**

1.1 On January 7, 2021, Plaintiff Hilda Ybarra filed a personal injury lawsuit against Costco in County Court at Law No. 1, Hidalgo County, Texas under Cause No. CL-21-0172-A. *Plaintiff's Original Petition, Ex. I.* Plaintiff alleges that she suffered injuries when a box of hangers fell on her while she was walking through the hamper isle in the Costco warehouse located at 1501 W. Kelly Ave., Pharr, Texas. *Id.*, at ¶ 5.02. As a result of her claimed bodily injuries, Plaintiff seeks to recover damages for: past and future healthcare expenses; past and future suffering; and past and future mental anguish. *Id.*, at ¶ 9.02.

1.2 Plaintiff's state court action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441. This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiff's Original Petition on Defendant Costco was executed on January 22, 2021. *See Service of Process Transmittal, Ex. 2.* Costco filed its Original Answer in state court on January 29, 2021. *See Defendant Costco Wholesale Corporation's Original Answer to Plaintiff's Original Petition, Ex. 3; State Court Docket Sheet, Ex. 4.*

II. The Parties

2.1 Plaintiff is a Texas citizen, who resides in Bexar County, Texas. *Plaintiff's Original Petition*, at ¶ 3.01, *Ex. 1.*

2.2 Defendant Costco is a Washington Corporation with its principal place of business in the State of Washington. *See Franchise Tax Account Status, Ex. 5.*

III. Procedural Requirements for Removal

3.1 Removal is timely, as this Notice is filed within 30 days of Costco receiving service of summons and Plaintiff's Original Petition on January 22, 2021. *See* 28 U.S.C. § 1446(b)(1).

3.2 Written notice of the filing of this Notice of Removal is being given to Plaintiff and her counsel as required by Texas law. Further, Costco is filing a copy of this Notice with the Clerk of the Court for Hidalgo County, Texas—where Plaintiff's cause was originally filed. *See Costco's Notice of Filing of Notice of Removal, Ex. 6.*

3.3 Costco has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

IV. Venue

4.1 Venue in this district is proper because the Southern District of Texas, McAllen Division, includes Hidalgo County. Hidalgo County is the county where the alleged incident occurred and where the original lawsuit is pending. *Plaintiff's Original Petition*, at ¶ 4.02.

V.

Jurisdictional Basis for Removal

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiff represents that she is a resident of Hidalgo County, Texas. *Plaintiff's Original Petition*, at ¶ 3.01, *Ex. 1*. Costco is the only named Defendant in this lawsuit. *See id.* at § III. Costco is a Washington Corporation with its principal place of business in the State of Washington. *Franchise Tax Account Status, Office of Texas Comptroller, Ex. 5*. Costco is therefore deemed a citizen of Washington for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, the parties are completely diverse, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, *16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed. 845 (1938)). Here, Plaintiff represents to the state Court that she seeks monetary damages of an amount between \$250,000.00 and \$750,000.00. *Plaintiff's Original Petition*, at ¶ 2.01, *Ex. 1*. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.

VI.
Jury Demand

6.1 Costco asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.


Prayer

WHEREFORE, PREMISES CONSIDERED, Defendant Costco Wholesale Corporation prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the County Court at Law No. 1 in Hidalgo County, Texas to the docket of this Honorable Court.

Respectfully submitted,

Shelton & Valadez, P.C.
600 Navarro, Suite 500
San Antonio, Texas 78205-1860
Ph: (210) 349-0515
Fx: (210) 349-3666
rvaladez@shelton-valadez.com

By:


Robert A. Valadez
State Bar No. 20421845

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Texas Rules of Civil Procedure on the 19th day of February 2021, to:

VIA EMAIL & E-SERVICE:

Humberto Tijerina, III
Cesar Palma
Derek I. Salinas
Tijerina Legal Group, P.C.
TijerinaLit@gmail.com
1200 South Col. Rowe Boulevard, Suite 4A
McAllen, Texas 78501
Telephone: (956) 777-7000
Fax: (956) 972-0144


ROBERT A. VALADEZ